FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Cleta Mitchell, Esq.
Foley & Lardner LLP
3000 K Street, NW
Washington, D.C. 20007

SEP 25 2008

RE: MUR 5961
DeMint for Senate Committee, Inc.
and Sunny Philips, in her official
capacity as treasurer

28044212084

Dear Ms. Mitchell:

On September 10, 2008, the Federal Election Commission accepted the signed conciliation agreement and civil penalty on your clients' behalf in settlement of a violation of 2 U.S.C. §§ 434(a)(6)(A) and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Kasey S. Morgenheim

Kasey S. Morgenheim
Attorney

Enclosure
Conciliation Agreement

**BEFORE THE FEDERAL ELECTION COMMISSION**

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| In the Matter of | ) | 2003 MAR 26 AM 10: 48 |
| | ) | MUR 5961 |
| DeMint for Senate Committee, Inc. and | ) | |
| Sunny Philips, in her official capacity | ) | |
| as treasurer | ) | |

## CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe DeMint for Senate Committee, Inc. and Sunny Philips, in her official capacity as treasurer (collectively "Respondents"), violated the 2 U.S.C. §§ 441a(f) and 434(a)(6)(A) provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").



NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

Background

1. DeMint for Senate Committee, Inc. ("DFS" or "Committee") was the principal campaign committee of James DeMint for his 2004 campaign for the United States Senate from South Carolina.
2. James DeMint was a candidate in three elections during the 2004 campaign: the Republican primary election on June 8, 2004, the run-off election following the primary on June 22, 2004, and the general election on November 2, 2004.
3. Sunny Philips is the current treasurer of DFS.
4. Sunny Philips was not the treasurer at the time of the activity described herein. Jeffery Parker and Thaddeus Barber were DFS's treasurers at the time of the activity described herein.

Applicable Law

5. At the time of the activity in question, the Act prohibited persons from making contributions to any candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceeded $2,000. 2 U.S.C. § 441a(a)(1)(A). No candidate or political committee shall knowingly accept any contribution in excess of the contribution limits. 2 U.S.C. § 441a(f).
6. An authorized political committee may redesignate the excessive portion of a contribution to another election, but the committee must, within 60 days of receipt of the contribution, notify the contributor of the amount of the contribution that was redesignated and of the option to request a refund. 11 C.F.R. § 110.1(b)(5). The committee may presumptively redesignate the excessive portion to the general election if the contribution is made before the candidate's primary election, is not designated in writing for a particular election, would be excessive

if treated as a primary election contribution, and as redesignated, does not cause the contributor to exceed any other contribution limit. 11 C.F.R. § 110.1(b)(5)(ii)(B).

7. The Act requires principal campaign committees of candidates for Federal office to notify in writing either the Secretary of the Senate or the Commission, as appropriate, and the Secretary of State of the appropriate state, of each contribution totaling $1,000 or more, received by any authorized committee of the candidate after the 20th day, but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The notification must be made within 48 hours after the receipt of the contribution and include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. *Id.* The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(E).

Receipt of Contributions that Exceed Limits

8. In a Commission Audit of the Committee conducted pursuant to 2 U.S.C. § 438(b), covering January 1, 2003 to December 31, 2004, the Commission found that DFS accepted 42 contributions from individuals that exceed the Act's contribution limit by $68,106.
9. Of these excessive contributions, $63,106 (93%) were eligible for presumptive redesignation and would not have exceeded the statutory contribution limits if properly redesignated. The remaining $5,000 could not be resolved through redesignation or reattribution.
10. DFS contends that it was unable to locate copies of all redesignation letters from the 2004 election cycle.

11. In response to interim audit report recommendations, DFS sent the required notices to redesignate the $63,106 in excessive contributions, but the notices were untimely, as these notices from DFS were not sent within 60 days of the Committee's receipt of the contribution.

Failure to File 48-Hour Notices

12. Among the contributions that Respondents received during the 48-hour notice period described in Paragraph 7 were 67 contributions of $1,000 or more totaling $115,272. Respondents did not file 23 48-hour notices for these contributions.
13. Respondents note that the dates of the South Carolina primary and runoff elections in 2004 overlapped with the dates for the 48-hour notices required under the Act, such that the runoff notice period began prior to the date of the primary election and also prior to the certification of the winner of the primary election. Respondents contend that they did not file 48-hour notices with respect to five contributions received after the primary and prior to the certification of the winner of the primary because of a good faith belief that they were not required to file 48-hour notices before the certification.
14. Following the certification of the winner of the primary election, respondents never filed 48-hour notices with respect to the five contributions referred to in Paragraph IV.13.

V. Respondents committed the following violations:

1. Respondents accepted contributions in the amount of $63,106 which were not timely redesignated as provided in 11 C.F.R. § 110.1(b)(5) and thus, by operation of law, are excessive contributions in violation of 2 U.S.C. § 441a(f). DFS accepted additional excessive contributions of $5,000 in violation of 2 U.S.C. § 441a(f).
2. Respondents failed to report campaign contributions of $1,000 or more received after the 20th day, but more than 48 hours before the general, primary, and run-off elections, within 48 hours of receipt of the contributions, in violation of 2 U.S.C. § 434(a)(6)(A).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of $25,000, pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. Respondents will cease and desist from violating 2 U.S.C. §§ 441a(f) and 434(a)(6)(A).

VIII. Respondents will refund the remaining $5,000 in excessive contributions by check to the contributors and provide notice of the refunds to the Commission.

IX. The Commission, on request of anyone filing a complaint under 2 U.S.C § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

X. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

XI. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XII. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.



FOR THE COMMISSION:

Thomasenia P. Duncan
General Counsel

BY: _____ 9/24/08
Ann Marie Terzaken — Date
Associate General Counsel for Enforcement

FOR THE RESPONDENTS:

Cleta Mitchell — March 26, 2008
Cleta Mitchell, Esq. — Date
Counsel for Respondents